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8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
11 WEBMAGIC VENTURES, LLC, a
California limited liability company,

12 Plaintiff,

13 v.

14 DEUX RON, INC., a Tennessee
15 corporation; RON HENSLEY, an
individual; and ERIC HENSLEY, an
16 individual,

17 Defendants.

Case No.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF FOR:**

1. **FEDERAL TRADEMARK
INFRINGEMENT;**
2. **COMMON LAW TRADEMARK
INFRINGEMENT**
3. **REFUSAL OF DEFENDANT
DEUX RON, INC.'S
TRADEMARK APPLICATION;**
4. **FEDERAL UNFAIR
COMPETITION; and**
5. **CALIFORNIA UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

1 Plaintiff WebMagic Ventures, LLC. (“Plaintiff”), a limited liability company
 2 having a principal place of business at 530 S. Lake Ave., Ste. 450, Pasadena, CA
 3 91101, by and through its counsel, for its Complaint against Defendants, collectively
 4 and individually, Deux Ron Inc., a Tennessee corporation, Ron Hensley, an
 5 individual, and Eric Hensley, an individual (hereinafter “Defendants”), complains
 6 and alleges as follows:

7 INTRODUCTION

8 1. Plaintiff brings this Action to stop Defendants' unlawful and infringing
 9 conduct in advertising, marketing, and offering entertainment services, namely, *inter*
 10 *alia*, providing facilities for recreation activities, providing amusement arcade
 11 services, and amusement arcades under the “ARCADIA” brand (“Infringing
 12 Services”), the provision of which has caused Plaintiff significant monetary
 13 damages and harm to Plaintiff’s brand and reputation and has caused significant
 14 consumer confusion as to the commercial source of these Infringing Services.

15 THE PARTIES

16 2. Plaintiff, WebMagic Ventures, LLC, is and at all times herein was a
 17 California limited liability company having a principal place of business at 530 S.
 18 Lake Ave., Ste. 450, Pasadena, CA 91101.

19 3. Plaintiff is informed and believes, and thereon alleges, that Defendant
 20 Deux Ron Inc. is, and at all times mentioned herein was, a Tennessee corporation
 21 having a principal place of business at 115 Historic Nature Trail, Gatlinburg, TN
 22 37738.

23 4. Plaintiff is informed and believes, and thereon alleges, that Defendant
 24 Ron Hensley is, and at all times mentioned herein was, an individual having a
 25 principal place of business at 115 Historic Nature Trail, Gatlinburg, TN 37738 and
 26 serves as President and C.E.O. of Deux Ron Inc.

27 5. Plaintiff is informed and believes, and thereon alleges, that Defendant
 28 Eric Hensley is, and at all times mentioned herein was, an individual having a

1 principal place of business at 115 Historic Nature Trail, Gatlinburg, TN 37738 and
 2 serves as Vice President of Deux Ron Inc.

3 6. Plaintiff is informed and believes that Defendants engage in infringing
 4 entertainment services, namely, providing facilities for recreation activities,
 5 providing amusement arcade services and amusement arcades under the brand
 6 “ARCADIA”, and Defendants heavily rely on online marketing of said services.

7 JURISDICTION

8 7. This Court has original subject matter over this action pursuant to 28
 9 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121 because this action arises under the
 10 laws of the United States, and because it involves allegations regarding trademark
 11 violations.

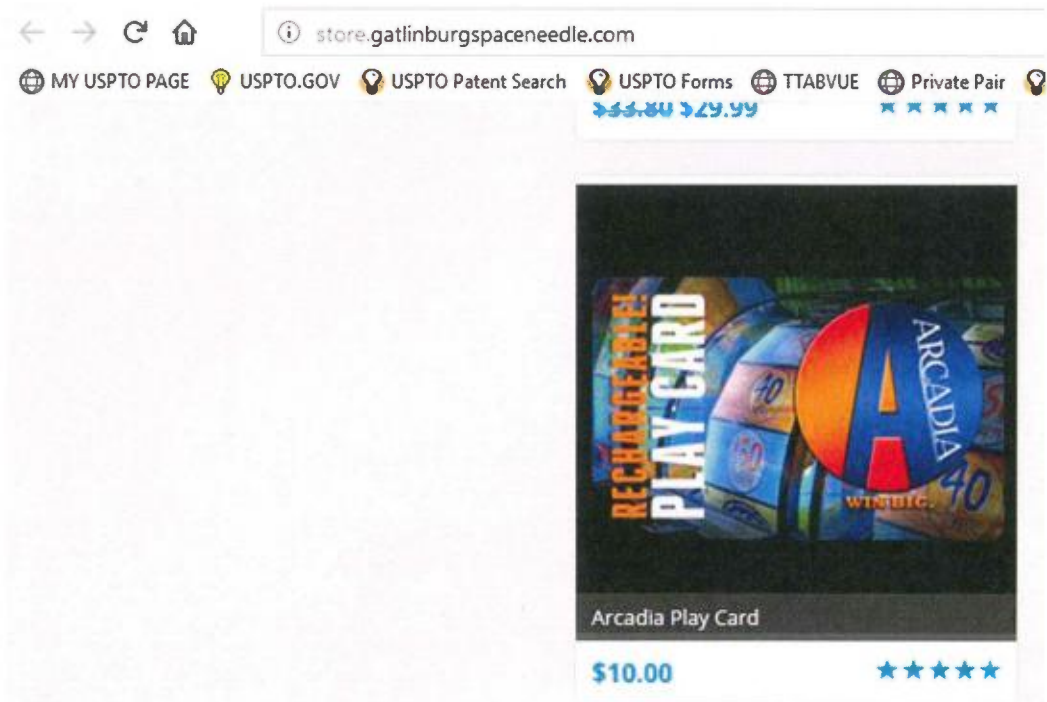
12 8. This Court has supplemental jurisdiction under 28 U.S.C. §§ 1338(b)
 13 and 1367 for all claims in this Complaint that are based upon state law because
 14 those claims arise from the same controversy as the claims being made under a
 15 federal statute.

16 9. This Court has personal jurisdiction over Defendants for many reasons.
 17 First, as evidenced in Illustration 1, Defendants have serviced at least one customer
 18 who purports to reside in California. Illustration 1: Screenshot of Defendants' self
 19 described “Arcadia” business review page on Yelp; June 28, 2018



1 The customer, Sam P., of Riverside, CA wrote a Yelp review of Defendants'
 2 self-described "Arcadia" business stating, "Lots of games; love it. However the fun
 3 dwindles when you find out the manager is racist. Her last departing words were:
 4 'This is the United States'".

5 Second, the acts complained of arise out of and relate to Defendants'
 6 marketing of its services within the Central District of California. Third, Defendants
 7 are applying for nationwide Federal Trademark protection for the term "ARCADIA"
 8 including protection in the Central District of California in relation with the
 9 Infringing Services, and affording Defendants this protection would cause
 10 significant consumer confusion for customers located in the Central District of
 11 California as to the source of Defendants' Infringing Services. Fourth, as seen in
 12 Illustration 2, Defendants are selling tickets on its website for an "Arcadia Play
 13 Card" for arcade game play and consumers from all over the world may purchase
 14 these tickets including those customers located in the Central District of California.
 15 Illustration 2: Screenshot of Defendants' website showing international offer for
 16 sale of "Arcadia Play Cards"; June 28, 2018.



10. Venue for this action also properly lies in the Central District of California pursuant to 28 U.S.C. § 1391(b)(2) & (3) because a substantial part of the events or omissions giving rise to the claim occurred, a substantial part of property that is the subject of the action is situated, and defendants are subject to the court's personal jurisdiction with respect to such action.

FACTUAL ALLEGATIONS

A. PLAINTIFF'S ARCADIA BUSINESS AND MARKS

11. Plaintiff's Penny Arcadia ("Arcadia" and "Penny Arcadia") was incorporated in the United Kingdom on November 21, 1980 by Jon Gresham. By 1991, Arcadia was internationally recognized and was promoting amusement industries in the state of Illinois. In 2003, Greg McLemore took over and transferred operations of Arcadia to California and expanded the Arcadia line of business to include Video Arcadia and Pinball Arcadia, the trademark rights and goodwill inuring to the benefit of WebMagic Ventures LLC. In and around August 2004 WebMagic Ventures LLC registered the following domains: PennyArcadia.com; PennyArcadia.org; Penny-Arcadia.com; Penny-Arcadia.org; PennyArcadia.net; PennyArcadia.co.uk; and Penny-Arcadia.co.uk..

12. In July 2005, Arcadia and Greg McLemore hosted a major two-day festival, show, and exposition in Los Angeles, California in conjunction with the Coin Operated Collectors Association. The event was attended by visitors from throughout North America, the United Kingdom, and Australia and included hundreds of early coin-operated amusement machines, antique slot machines, early coin-operated music machines, several coin-operated automata, modern coin-operated video games, and home videogame consoles, the vast majority of which were playable by visitors. The original 1981 Penny Arcadia sign was hung at the event for all visitors to see. Arcadia's brand along with the popularity of Arcadia hosted events continues to grow to this day.

13. Plaintiff has invested substantial effort and resources to develop and

1 promote public recognition of the ARCADIA-related marks including PENNY
 2 ARCADIA, VIDEO ARCADIA, PINBALL ARCADIA, and ARCADIA (hereinafter
 3 “the Arcadia Marks”). Plaintiff has built up tremendous goodwill and brand
 4 reputation among consumers through its significant investment in advertising,
 5 promoting, and delivering of services of the highest quality under Plaintiff’s
 6 federally-registered trademarks. Defendants’ engagement in Infringing Services, as
 7 alleged further below, is believed to have caused consumer confusion and
 8 undermines, diminishes, and tarnishes Plaintiff’s ARCADIA brand, reputation, and
 9 goodwill among consumers and members of the trade.

10 14. Plaintiff has caused several trademarks to be registered on the Principal
 11 Register of the U.S. Patent and Trademark Office in connection with a range of
 12 goods and services including those identified below. The registered trademarks
 13 include, but are not limited to, the following:

	Plaintiff’s US Reg. No. 3,900,759
Drawing	<p style="text-align: center;">PENNY ARCADIA</p>
Description of the Mark	The Mark consist of the terms “PENNY ARCADIA” without claim to any particular font style, size, or color.
Services in Class 41	Conducting an on-line entertainment and education exhibition, in the field of the coin-operated machine, vending, antique slot machine, amusement, scale model, and videogame industries, namely, its art, history, inventions, people, sociology, and the educational and entertainment aspects and influences thereof
Services in Class 35	Advertising, marketing and promotion services; art galleries; association services, namely, promoting the interests of those interested in the coin-operated machine, vending, antique slot machine, amusement, scale model, and videogame industries; club services, namely, promoting the interests of those interested in the coin-operated machine, vending, antique slot machine, amusement, scale model, and videogame industries; conducting an on-line trade-show exhibition, in the field of the coin-operated machine, vending, antique slot machine, amusement,

scale model, and videogame industries; conducting market surveys; demographic consultation and studies; flea markets; market research; marketing services, namely, providing advertising videos to promote the coin-operated machine, vending, antique slot machine, amusement, scale model, and videogame industries; organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; organizing, promoting and conducting exhibitions and trade-shows for business purposes featuring booths and displays relating to antiques and collectibles; promoting public awareness of the coin-operated machine, vending, antique slot machine, amusement, scale model, and videogame industries, and awareness of the art, history, inventions, science, mechanisms, people, or sociology, and business, educational and entertainment aspects and influences of the aforementioned industries; promotional services, namely, promoting the charities of others; providing information and news in the field of business; provision of market research information; public opinion polling; public opinion surveys; public relations; rental of vending machines; retail shops featuring machines, books, DVDs, toys, gifts, and other items related to or about the coin-operated machine, vending, antique slot machine, amusement, scale model, and videogame industries, and the art, history, inventions, science, mechanisms, people, or sociology, and business, educational and entertainment aspects and influences of the aforementioned industries; shoppers' guide information; vending machine services

15. Plaintiff's ARCADIA Marks have been extensively and continuously used in interstate commerce to identify and distinguish Plaintiff's high quality entertainment and arcade services. Plaintiff has serviced customers throughout the United States, including service to customers in the state of California. The ARCADIA Marks have been in use by Plaintiff since long before Defendants' promotion and sale of its Infringing Services under the ARCADIA Mark.

16. The ARCADIA Marks are symbols of the Plaintiff's services' origin, quality, reputation, and goodwill and have never been abandoned.

17. Plaintiff and its predecessors in interest have expended substantial time, money, and other resources developing, advertising, and otherwise promoting the ARCADIA brand and Marks over the past 37+ years such that the relevant consumers exclusively associate the PENNY ARCADIA Mark and ARCADIA brand with Plaintiff's services.

1 18. The PENNY ARCADIA Mark is inherently distinctive and has attained
 2 secondary meaning as an identifier of high quality entertainment and arcade
 3 services.

4 19. Plaintiff has carefully monitored and policed the use of the PENNY
 5 ARCADIA Marks and the PENNY ARCADIA Marks have never been assigned or
 6 licensed to the Defendants in this matter.

7 20. Plaintiff is informed and believes, and thereon alleges, that at all times
 8 relevant to this action Defendants had full and actual knowledge of Plaintiff's
 9 ownership of the PENNY ARCADIA Marks, including Plaintiff's exclusive right to
 10 use and license such intellectual property and the goodwill associated with the
 11 PENNY ARCADIA Marks, in addition to the constructive knowledge that
 12 Defendants had arising from Plaintiff's federal trademark registrations for the
 13 PENNY ARCADIA Marks including those not referenced herein. Defendants have
 14 further been on express notice of Plaintiff's rights since December 15, 2017, when it
 15 received a notice of Opposition number 91238419 filed in the United States Patent
 16 and Trademark Office against Defendant, Deux Ron Inc.'s Trademark application
 17 for the term ARCADIA in connection with Defendants' Infringing Services.

18 **B. DEFENDANTS' INFRINGING ACTIVITIES**

19 21. Plaintiff is informed and believes, and thereon alleges, that Defendants
 20 offered for sale, sold and/or distributed Infringing Services under the ARCADIA
 21 Mark. Specifically, upon information and belief, Defendants are using the
 22 ARCADIA Mark for inferior services which are not authorized by Plaintiff.
 23 Plaintiff has used the PENNY ARCADIA Mark extensively and continuously before
 24 Defendants began offering confusingly similar Infringing Services under the term
 25 ARCADIA.

26 22. On May 17, 2017 Defendant, Deux Ron Inc. filed US trademark
 27 application number 87/453,154 ("the Application"). Defendant filed the
 28 Application without permission from Plaintiff. The Application identifies services

as including "Entertainment services, namely, providing facilities for recreation activities; providing amusement arcade services; amusement arcades" in class 41. The Mark of the Application consists of the term "ARCADIA". The Mark of the Application consists of standard characters without claim to any particular font style, size, or color. On October 17, 2017, the USPTO published the Application for opposition.

23. The Defendants' infringing Trademark Application includes:

	Applicant's US App. No. 87/453,154
Drawing	ARCADIA
Description of the Mark	The Mark consist of the term "ARCADIA" without claim to any particular font style, size, or color.
Services in Class 41	Entertainment services, namely, providing facilities for recreation activities; providing amusement arcade services; amusement arcades

24. The table above accurately reproduces the drawing of the Mark of the Application.

25. The table above accurately quotes the services identified in the Application.

26. The Application identifies services as including "Entertainment services, namely, providing facilities for recreation activities; providing amusement arcade services; amusement arcades" in class 41.

27. The Mark of the Application consists of the term "ARCADIA".

28. The Mark of the Application consists of standard characters without claim to any particular font style, size, or color.

29. Plaintiff is informed and believes, and based thereon alleges, that

1 Applicant did not use the Mark ARCADIA in the United States prior to December
2 31, 2009.

3 30. Plaintiff is informed and believes, and based thereon alleges, that
4 Applicant did not use the Mark ARCADIA in the United States prior to December
5 31, 2008.

6 31. Plaintiff is informed and believes, and based thereon alleges, that
7 Applicant did not use the Mark ARCADIA in the United States prior to December
8 31, 2007.

9 32. Plaintiff is informed and believes, and based thereon alleges, that
10 Applicant did not use the Mark ARCADIA in the United States prior to December
11 31, 2006.

12 33. Plaintiff is informed and believes, and based thereon alleges, that
13 Applicant did not use the Mark ARCADIA in the United States prior to December
14 31, 2005.

15 34. Plaintiff is informed and believes, and based thereon alleges, that
16 Applicant did not use the Mark ARCADIA in the United States prior to August 28,
17 2004.

18 35. Plaintiff is informed and believes, and based thereon alleges, that
19 Applicant did not use the Mark ARCADIA in the United States in conjunction with
20 and to identify the services listed in the Application prior to December 31, 2009.

21 36. Plaintiff is informed and believes, and based thereon alleges, that
22 Applicant did not use the Mark ARCADIA in the United States in conjunction with
23 and to identify the services listed in the Application prior to December 31, 2008.

24 37. Plaintiff is informed and believes, and based thereon alleges, that
25 Applicant did not use the Mark ARCADIA in the United States in conjunction with
26 and to identify the services listed in the Application prior to August 28, 2004.

27 38. Plaintiff is informed and believes, and based thereon alleges, that
28 Applicant did not use the Mark ARCADIA in the United States prior to Plaintiff's

1 use of the Mark PENNY ARCADIA in commerce in the United States.

2 39. Plaintiff is informed and believes, and based thereon alleges, that
3 Applicant did not use the Mark ARCADIA in the United States prior to Plaintiff's
4 common law use of the Mark ARCADIA in commerce in the United States.

5 40. Despite notice of Plaintiff's superior rights in the ARCADIA brand and
6 PENNY ARCADIA Marks, Defendants continue to offer for sale and promote its
7 Infringing Services under the term ARCADIA.

8 **FIRST CLAIM FOR RELIEF**

9 **(Federal Trademark Infringement; 15 U.S.C. § 1114)**

10 41. Plaintiff incorporates the preceding paragraphs of this Complaint as if
11 fully set forth herein.

12 42. Plaintiff's ARCADIA Mark is a valid, protectable trademark that is
13 registered on the principal register in the United States Patent and Trademark
14 Office.

15 43. As described in more detail above, Defendants have used and sold
16 Infringing Services bearing the ARCADIA Mark in connection with the marketing,
17 promotion, and sale of their services without Plaintiff's consent, in a manner that is
18 likely to cause confusion and/or mistake, or that has deceived members of the
19 consuming public and/or the trade. Defendants' promotion and sale of Infringing
20 Services, and infringing activities, are likely to cause confusion, mistake, and
21 deception among members of the trade and the general consuming public as to the
22 origin, sponsorship, and quality of Defendants' Infringing Services and other related
23 commercial activities.

24 44. Plaintiff would have no control over the nature or quality of the
25 services identified in the Application should they be provided or produced by
26 Applicant under the Mark ARCADIA.

27 45. Plaintiff has been, and continues to be, damaged by Defendants'
28 infringement, including by suffering irreparable harm through the diminution of

1 trust and goodwill among Plaintiff's consumers and members of the general
2 consuming public and the trade.

3 46. As a result of Defendants' infringement of the ARCADIA Marks,
4 Plaintiff is entitled to an injunction, as set forth below, and an Order of destruction
5 of all of Defendants' infringing materials under Defendants' possession, custody
6 and/or control.

7 47. Plaintiff is also entitled to all monetary relief and other remedies
8 available under the Lanham Act, including but not limited to treble damages and/or
9 actual profits, reasonable attorneys' fees, costs, and prejudgment interest, and/or
10 statutory damages.

11 **SECOND CLAIM FOR RELIEF**

12 **(Common Law Trademark Infringement; 15 U.S.C. § 1119)**

13 48. Plaintiff incorporates the preceding paragraphs of this Complaint as if
14 fully set forth herein.

15 49. As described in more detail above, Defendants have used and sold
16 Infringing Services bearing the ARCADIA Mark in connection with the marketing,
17 promotion, and sale of their services without Plaintiff's consent, in a manner that is
18 likely to cause confusion and/or mistake, or that has deceived members of the
19 consuming public and/or the trade. Defendants' promotion and sale of Infringing
20 Services, and infringing activities, are likely to cause confusion, mistake, and
21 deception among members of the trade and the general consuming public as to the
22 origin, sponsorship, and quality of Defendants' Infringing Services and other related
23 commercial activities.

24 50. Plaintiff has been, and continues to be, damaged by Defendants'
25 infringement, including by suffering irreparable harm through the diminution of
26 trust and goodwill among Plaintiff's consumers and members of the general
27 consuming public and the trade.

28 51. Plaintiff is informed and believes, and based thereon alleges, that

Defendants have committed the infringement described above knowing of Plaintiff's Federal Trademark rights in the PENNY ARCADIA trademark and common law rights in the brand ARCADIA and knowing that Defendants' unauthorized use of the mark is likely to cause confusion. Defendants have thus willfully, knowingly, and maliciously deceived and confused the relevant consuming public, and in so doing has acted with fraud, oppression, or malice. As such, in addition to the other relief sought herein, Plaintiff is entitled to an award of punitive damages.

52. As a result of Defendants' infringement of the PENNY ARCADIA Mark and common law ARCADIA brand, Plaintiff is also entitled to preliminary and permanent injunctive relief, as set forth below, and an Order of destruction of all of Defendants' infringing and materials under Defendants' possession, custody and/or control.

53. Plaintiff is also entitled to all monetary relief and other remedies available including but not limited to treble damages and/or actual profits, reasonable attorneys' fees, costs, and prejudgment interest, and/or statutory damages.

THIRD CLAIM FOR RELIEF

(Refusal of Defendant Deux Ron Inc.'s Infringing Trademark Application; 15 U.S.C. § 1119)

54. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

55. On June 29, 2010 Plaintiff filed US trademark application number 85/074,444.

56. On October 19, 2010 the USPTO published US trademark application number 85/074,444 for opposition.

57. No one filed an opposition to US trademark application number 85/074,444.

58. On January 4, 2011, US trademark application number 85/074,444 was

1 registered by the USPTO when it duly granted US trademark registration number
2 3,900,759 (“the Registration”) to Plaintiff.

3 59. The current owner of US Trademark Registration 3,900,759 is
4 WebMagic Ventures, LLC, a limited liability company.

5 60. The Registration identifies, inter alia, services including “Conducting
6 an on-line entertainment and education exhibition, in the field of the coin-operated
7 machine, vending, antique slot machine, amusement, scale model, and videogame
8 industries, namely, its art, history, inventions, people, sociology, and the educational
9 and entertainment aspects and influences thereof” in class 41.

10 61. The Registration identifies, inter alia, services including “Advertising,
11 marketing and promotion services; art galleries; association services, namely,
12 promoting the interests of those interested in the coin-operated machine, vending,
13 antique slot machine, amusement, scale model, and videogame industries; club
14 services, namely, promoting the interests of those interested in the coin-operated
15 machine, vending, antique slot machine, amusement, scale model, and videogame
16 industries; conducting an on-line trade-show exhibition, in the field of the coin-
17 operated machine, vending, antique slot machine, amusement, scale model, and
18 videogame industries; conducting market surveys; demographic consultation and
19 studies; flea markets; market research; marketing services, namely, providing
20 advertising videos to promote the coin-operated machine, vending, antique slot
21 machine, amusement, scale model, and videogame industries; organization of
22 events, exhibitions, fairs and shows for commercial, promotional and advertising
23 purposes; organizing, promoting and conducting exhibitions and trade-shows for
24 business purposes featuring booths and displays relating to antiques and collectibles;
25 promoting public awareness of the coin-operated machine, vending, antique slot
26 machine, amusement, scale model, and videogame industries, and awareness of the
27 art, history, inventions, science, mechanisms, people, or sociology, and business,
28 educational and entertainment aspects and influences of the aforementioned

1 industries; promotional services, namely, promoting the charities of others;
2 providing information and news in the field of business; provision of market
3 research information; public opinion polling; public opinion surveys; public
4 relations; rental of vending machines; retail shops featuring machines, books,
5 DVDs, toys, gifts, and other items related to or about the coin-operated machine,
6 vending, antique slot machine, amusement, scale model, and videogame industries,
7 and the art, history, inventions, science, mechanisms, people, or sociology, and
8 business, educational and entertainment aspects and influences of the
9 aforementioned industries; shoppers' guide information; vending machine services”
10 in class 35.

11 62. Plaintiff has extensively used the PENNY ARCADIA Mark in the US
12 in conjunction with and to identify services including providing facilities for
13 recreation activities; providing amusement arcade services; and amusement arcades.

14 63. Plaintiff has obtained extensive common law rights in the PENNY
15 ARCADIA Mark in the US in conjunction with and to identify various goods and
16 services.

17 64. Plaintiff has obtained extensive common law rights in the ARCADIA
18 Mark in the US in conjunction with and to identify various goods and services.

19 65. Plaintiff has substantial trademark rights in the United States for the
20 Mark in the Registration.

21 66. The Mark in the Registration consists of standard characters without
22 claim to any particular font style, size, or color.

23 67. The Mark in the Registration contains the term “ARCADIA”.

24 68. The Registration became incontestable for Classes 035 and 041 under
25 Section 15 of the Trademark Act, 15 U.S.C. §1065 on or about March 9, 2017.

26 69. On May 17, 2017 Defendant, Duex Ron Inc. filed US trademark
27 application number 87/453,154 (“the Application”). Defendant filed the
28 Application without permission from Plaintiff. The Application identifies services

1 as including "Entertainment services, namely, providing facilities for recreation
2 activities; providing amusement arcade services; amusement arcades" in class 41.
3 The Mark of the Application consists of the term "ARCADIA". The Mark of the
4 Application consists of standard characters without claim to any particular font
5 style, size, or color. On October 17, 2017, the USPTO published the Application for
6 opposition.

7 70. The Mark of the Application consists of the term "ARCADIA".

8 71. Plaintiff is informed and believes, and based thereon alleges, that
9 Applicant did not use the Mark ARCADIA in the United States prior to August 28,
10 2004.

11 72. Plaintiff is informed and believes, and based thereon alleges, that
12 Applicant did not use the Mark ARCADIA in the United States in conjunction with
13 and to identify the services listed in the Application prior to December 31, 2008.

14 73. Plaintiff is informed and believes, and based thereon alleges, that
15 Applicant did not use the Mark ARCADIA in the United States in conjunction with
16 and to identify the services listed in the Application prior to December 31, 2007.

17 74. Defendant, Deux Ron Inc.'s US trademark application number
18 87/453,154 and any resulting registration would likely cause further consumer
19 confusion with Plaintiff's common law trademark rights and Plaintiff's rights in its
20 federal trademark registration. Accordingly, pursuant to 15 U.S.C. § 1119, Plaintiff
21 requests that the Court order the Defendant to withdraw its US trademark
22 application number 87/453,154 from the United States Patent and Trademark Office
23 and enjoin Defendants from seeking acquisition of or making application for any
24 trademarks containing the term ARCADIA or any similarly confusing Marks.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Federal Unfair Competition; 15 U.S.C. § 1119)**

27 75. Plaintiff incorporates the preceding paragraphs of this Complaint as if
28 fully set forth herein.

1 76. Plaintiff's ARCADIA Mark is a valid, protectable trademark that has
2 been registered as marks on the principal register in the United States Patent and
3 Trademark Office.

4 77. Plaintiff is the owner and registrant of the PENNY ARCADIA Mark.

5 78. Plaintiff operates under and uses the ARCADIA and PENNY
6 ARCADIA Marks in connection with its products.

7 79. Defendants have made commercial use of and sold Infringing Services
8 bearing the ARCADIA Marks and Plaintiff's trade name, without authorization
9 from Plaintiff.

10 80. Defendants' infringing activities, and related false descriptions and
11 representations as to the origin and quality of their services, are likely to cause
12 confusion, mistake, and/or deception among members of the consuming public and
13 members of the trade. These members of the consuming public and members of the
14 trade are likely to be misled into believing that there is an affiliation, connection, or
15 association between Plaintiff and Defendants, and/or have been, or will be, misled
16 as to the origin, sponsorship, or approval of Defendants' inferior non-genuine
17 ARCADIA branded services.

18 81. Plaintiff has not consented to Defendants' use of the ARCADIA brand
19 or trade name.

20 82. Defendants' unauthorized use of the ARCADIA brand and trade name
21 is willful and has caused damage to Plaintiff, causing this matter to be an
22 exceptional case under 15 U.S.C. § 1117(a).

23 83. Defendants' acts constitute false statements in connection with products
24 and/or services distributed in interstate commerce, in violation of Section 43(a) of
25 the Lanham Act, 15 U.S.C. § 1125(a).

26 84. Defendants' acts have caused and are continuing to cause irreparable
27 injury to Plaintiff's brand, goodwill, and reputation.

28 85. Plaintiff is entitled to monetary relief and all other remedies available

1 under the Lanham Act, including but not limited to treble damages and/or actual
 2 profits, reasonable attorneys' fees, costs and prejudgment interest, and/or statutory
 3 damages.

4 86. An award of monetary damages alone cannot fully compensate Plaintiff
 5 for its injuries and Plaintiff lacks an adequate remedy at law.

6 **FIFTH CLAIM FOR RELIEF**

7 **(California Unfair Competition; Cal. Bus. Prof. Code §§ 17200, et seq.)**

8 87. Plaintiff incorporates the preceding paragraphs of this Complaint as if
 9 fully set forth herein.

10 88. Defendants have engaged in unlawful and unfair business acts or
 11 practices, as defined by Cal. Bus. Prof. Code §§ 17200, et seq., by committing the
 12 illegal acts and practices as alleged herein, all in an effort to gain an unfair
 13 competitive advantage over Plaintiff.

14 89. Defendants' misconduct is unlawful because, as described herein, its
 15 misconduct constitutes violations of numerous state and federal statutes, including
 16 but not limited to state false advertising laws such as Cal. Bus. Prof. Code § 17500,
 17 as well as the Lanham Act, 15 U.S.C. §§ 1114 and 1125. Further, its misconduct is
 18 unfair in that Defendants' actions, as described herein, significantly threaten and/or
 19 harm competition by selling inferior services, all while harming Plaintiff's
 20 reputation in the marketplace.

21 90. These unlawful and unfair business acts and/or practices were
 22 committed pursuant to Defendants' business marketing, promotional, and sales
 23 efforts in relation to the ARCADIA Mark.

24 91. As a direct and proximate result of Defendants' unlawful and unfair
 25 business practices, Plaintiff suffered irreparable injury to the ARCADIA and
 26 PENNY ARCADIA brands, business reputation, and goodwill. As such, Plaintiff's
 27 remedy at law is not adequate to compensate for the injuries inflicted by Defendants.
 28 Accordingly, Plaintiff is entitled to temporary, preliminary, and permanent

1 injunctive relief against Defendants, in addition to restitution in an amount to be
2 proven at trial.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff respectfully prays that the Court enter judgment as
5 follows:

6 92. That Defendants infringed the PENNY ARCADIA Mark and
7 ARCADIA brands, engaged in trademark infringement and engaged in unfair
8 competition through its use, promotion and sale of services bearing the ARCADIA
9 Mark;

10 93. That Defendants' trademark infringement and unfair competition were
11 knowing and willful and committed with bad faith and intent to deceive and that this
12 case is exceptional under 15 U.S.C. § 1117(a);

13 94. That the Court enter an Order enjoining and restraining Defendants and
14 all persons or entities acting as agents of or in concert with Defendants, during the
15 pendency of this action and thereafter perpetually, from infringing or counterfeiting,
16 the ARCADIA brand and PENNY ARCADIA Marks in any way, including but not
17 limited to the sale of Infringing Services under the ARCADIA brand;

18 95. That the Court enter an Order directing Defendants to send a Plaintiff
19 approved notice to any customer who purchased any infringing "ARCADIA"
20 branded "Arcadia Play Card" from Defendants, informing the customer that the sale
21 of the product violated Federal trademark and counterfeiting laws, and that
22 Defendants will refund the money paid by the consumer immediately upon request
23 and return of the product, with any such product returns going directly to Plaintiff or
24 their counsel for ultimate destruction at Defendants' expense;

25 96. That the Court enter an Order requiring Defendants to account to and
26 pay Plaintiff for all profits and damages resulting from Defendants' infringement,
27 counterfeiting activities and unfair competition;

28 97. That Plaintiff be awarded statutory damages to the fullest extent

1 available under the law, including but not limited to pursuant to Section 15 U.S.C. §
2 1117(c);

3 98. That Defendant Deux Ron Inc. be ordered to withdraw its US
4 trademark application number 87/453,154 from the United States Patent and
5 Trademark Office and that Defendants be enjoined from seeking acquisition of or
6 making application for any trademarks containing the term ARCADIA or any
7 similarly confusing Marks.

8 99. That Plaintiff be awarded prejudgment interest;

9 100. That Plaintiff be awarded reasonable attorneys' fees to the fullest extent
10 available under the law;

11 101. That Plaintiff be awarded treble damages to the fullest extent available
12 under the law, including but not limited to pursuant to Section 15 U.S.C. § 1117(b);

13 102. That Plaintiff be awarded full restitution;

14 103. That Plaintiff be awarded costs of prosecuting this claim;

15 104. That Plaintiff be awarded further injunctive and provisional remedies,
16 as appropriate; and

17 105. That Plaintiff be granted such further relief as the Court deems just and
18 proper.

19
20 DATED: July 6, 2018

ERVIN COHEN & JESSUP LLP

Russell M. Selmont

21
22 By: /s/ Russell M. Selmont

Russell M. Selmont

23 Attorneys for Plaintiff WEBMAGIC
24 VENTURES, LLC
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JURY DEMAND

Plaintiff WebMagic Ventures LLC hereby demands a trial by jury on all issues herein so triable.

DATED: July 6, 2018

ERVIN COHEN & JESSUP LLP

Russell M. Selmont

By: /s/ Russell M. Selmont

Russell M. Selmont

Attorneys for Plaintiff WEBMAGIC
VENTURES, LLC

ERVIN COHEN & JESSUP^{LLP}

CERTIFICATE OF INTERESTED PARTIES

The undersigned, counsel of record for Plaintiff WebMagic Ventures, LLC, certifies that the following parties may have a pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

Deux Ron, Inc.	Defendant
Ron Hensley	Defendant
Eric Hensley	Defendant

DATED: July 6, 2018

ERVIN COHEN & JESSUP LLP
Russell M. Selmont

By: /s/ Russell M. Selmont
Russell M. Selmont
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VENTURES, LLC

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